Supreme Court, U.S.
FILED
APR 22 2002
CLERK

No. 01-1395

IN THE

Supreme Court of the United States

SPRINKLER FITTERS LOCAL 417,

Petitioner,

v.

MINNESOTA CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

GREGG J. CAVANAGH
13277 94th Avenue North
Maple Grove, Minnesota 55369
(763) 494-9465

Attorney for Respondents Minnesota Chapter of Associated Builders and Contractors, Inc., North Central Chapter of the American Fire Sprinkler Association, Allied Mechanical Systems of Hutchinson, Inc., Ebert & Hinson Fire Protection, Inc., and General Sprinkler Corporation

173607

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED FOR REVIEW

Are the Minnesota statute and rules, which dictate the substantive terms of ERISA apprenticeship programs for apprentice sprinkler fitters, preempted by ERISA?

STATEMENT PURSUANT TO RULE 29.6

None of the corporate Respondents herein has a parent company and no publicly held corporation owns 10% or more of the stock of any such corporate Respondent.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statement of the Case	1
Reasons for Denying the Writ	6
I. The Eighth Circuit's Decision Is Wholly Consistent With This Court's *Dillingham* Decision.	6
II. The Eighth Circuit Properly Distinguished The Present Case From The Tenth Circuit's *Willmar* Case.	18
III. The Eighth Circuit Properly Held That The Minnesota Statute And Rules Are Not Saved From Preemption By ERISA's Savings Clause.	20
Conclusion	23

TABLE OF CITED AUTHORITIES

Page

Cases:

Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) 17

Arkansas Blue Cross & Blue Shield v. St. Mary's Hospital, Inc., 947 F.2d 1341 (8th Cir. 1991), *cert. denied*, 504 U.S. 957 (1992) 17

Associated General Contractors v. Smith, 74 F.3d 926 (9th Cir. 1996) 20, 21, 22

Baxter v. Lynn, 886 F.2d 182 (8th Cir. 1989) 17

California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc., 519 U.S. 316 (1997) ..... *passim*

DeBuono v. NYSA-ILA Medical and Clinical Services Fund, 520 U.S. 806 (1997) 11

Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981) ... 18

District of Columbia v. Greater Washington Board of Trade, 506 U.S. 125 (1992) 17

FMC Corp. v. Holliday, 498 U.S. 52 (1990) 17

Cited Authorities

Page

Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee, 891 F.2d 719 (9th Cir. 1989), *cert. denied*, 498 U.S. 822 (1990) 16

Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724 (1985) 17

Minnesota Chapter of Associated Builders and Contractors, Inc. v. Minnesota Department of Labor and Industry, 47 F.3d 975 (8th Cir. 1995) 21

New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co., 514 U.S. 645 (1995) 8, 11, 16, 17

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983) 16, 17

Willmar Electric Service, Inc. v. Cooke, 212 F.3d 533 (10th Cir.), *cert. denied*, 531 U.S. 979 (2000) 18, 19, 23

Cited Authorities

Page

Statutes:

29 U.S.C. §§ 50, *et seq.* 20, 21

29 U.S.C. §§ 1001, *et seq.* 3

29 U.S.C. § 1002(1) 3

29 U.S.C. § 1002(3) 3

29 U.S.C. § 1144(a) 3

29 U.S.C. § 1144(d) 20

Minn. Stat. § 178.06 2

Minn. Stat. § 178.07 2

Minn. Statutes Chapter 299M 1

Minn. Stat. § 299M.01, subd. 2 ..... 1, 13

Minn. Stat. § 299M.01, subd. 8 13

Minn. Stat. § 299M.03, subd. 1 13

Minn. Stat. § 299M.03, subd. 2 13

Cited Authorities

Page

Rules:

Minn. R. 5200.0320, subp. 1 2

Minn. R. 5200.0320, subp. 10 2

Minn. R. 5200.0320, subp. 11 2

Minn. R. 5200.0390, subp. 1 2

Minn. R. 5200.0390, subp. 2 2

Minn. R. 7512.0100, subp. 1 2

Minn. R. 7512.0100, subp. 7 ..... 1, 2

Minn. R. 7512.0100, subp. 14 ..... 1, 2

Minn. R. 7512.0400, subp. 1 13

Minn. R. 7512.0500-7512.0700 13

Minn. R. 7512.0800, subp. 1 13

Minn. R. 7512.0900, subp. 3 2

Minn. R. 7512.0900, subp. 4 13

Minn. R. 7512.0900, subp. 4.C 13

Minn. R. 7512.1300-7512.1600 13

Minn. R. 7512.1700-7512.2000 13

Minn. R. 7512.2100 subp. 3.C 2

STATEMENT OF THE CASE

In 1992, the Minnesota Legislature enacted Minnesota Statutes Chapter 299M, which comprehensively regulated the fire protection industry in Minnesota. Included among the statutory provisions was a requirement that any apprentice sprinkler fitters working in Minnesota be registered with a "state or federal approval agency." Minn. Stat. § 299M.01, subd. 2. The statute did not define "state or federal approval agency." *Id.*

In 1994, the Minnesota Department of Public Safety issued detailed rules under Chapter 299M. Included among the rules were rules defining "federal approval agency" as "the United States Department of Labor, Bureau of Apprenticeship and Training," and "state approval agency" as

> the Department of Labor and Industry or a state agency in Minnesota or another state if the commissioner determines that the state agency approves training programs and monitors apprentice or trainee progress in a manner comparable to that done by the Department of Labor and Industry or by the United States Department of Labor, Bureau of Apprenticeship and Training.

Minn. R. 7512.0100, subps. 7, 14.

Together, the statute and rules required all Minnesota fire protection contractors to maintain an apprenticeship program approved by the Minnesota Department of Labor and Industry ("DOLI"),[1] and to register all of their apprentices in the approved

1. In its petition, Local 417 contends that Minnesota fire protection contractors do not have to meet the DOLI's requirements; they can obtain (Cont'd)

apprenticeship program. Minn. R. 7512.0100, subps. 1, 7, 14, 7512.0900, subp. 3, 7512.2100, subp. 3.C. Contractors without an approved program could not employ apprentices in the state. *Id.*

To obtain an approved apprenticeship program, contractors were forced to meet a number of state-imposed requirements. First, the contractors had to ensure that their apprenticeship programs were of the same duration as the majority of apprenticeship programs on file with the DOLI. Minn. Stat. § 178.06; Minn. R. 5200.0320, subp. 1, 5200.0390, subp. 1; Petitioner's Appendix ("App.") at A-9. Second, the contractors had to base their apprentice wage structure on the prevailing wage for sprinkler fitters in the county in which the contractor was headquartered. Minn. R. 5200.0390, subp. 2; App. at A-9. Third, the contractors had to adopt the same graduated pay scale for apprentices as that found in the majority of apprenticeship programs on file with the DOLI. Minn. R. 5200.0320, subp. 10, 5200.0390, subp. 1; App. at A-9. Fourth, the contractors had to ensure that their apprenticeship programs provided for at least 144 hours of "related," or classroom, instruction per year. Minn. Stat. § 178.07; Minn. R. 5200.0320, subp. 11; App. at A-9. Finally, the contractors had to agree to register apprentices in

---

(Cont'd)

approval for their programs from the U.S. Department of Labor's Bureau of Apprenticeship and Training ("BAT") or another state. This contention is false. As the record clearly illustrates, BAT will not approve an apprenticeship program for a contractor domiciled in Minnesota. App. at A-8 & A-28 to A-29. Instead, BAT defers to the DOLI with respect to the approval of Minnesota contractors' apprenticeship programs and the registration of their apprentices. *Id.* Moreover, neither the Department of Public Safety nor the DOLI has recognized any state agency other than the DOLI as an approval authority. *Id.*

accordance with the journeyman-apprentice ratios established by the DOLI.[2] App. at A-9.

Faced with these onerous requirements, plaintiffs Minnesota Chapter of Associated Builders and Contractors, Inc., North Central Chapter of the American Fire Sprinkler Association, Allied Mechanical Systems of Hutchinson, Inc., Ebert & Hinson Fire Protection, Inc., and General Sprinkler Corporation brought suit in the United States District Court for the District of Minnesota against the Department of Public Safety and Michael Jordan, the Commissioner of Public Safety. The plaintiffs alleged that the statutory provisions and rules regarding apprenticeship were preempted under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"). ERISA preempts state laws which "relate to" specified "employee benefit plans," including "apprenticeship or other training programs."[3] The plaintiffs sought a declaration that the statutory provisions and rules were illegal, and a permanent injunction preventing the Department of Public Safety and its commissioner from enforcing them.

With the action, the plaintiffs filed a motion for a temporary restraining order. Before that motion could be heard, the parties agreed to a temporary injunction prohibiting the defendants from enforcing the offending provisions until a motion for a permanent injunction could be heard and decided. App. at A-9.

---

2. A contractor may register one apprentice sprinkler fitter for the first journeyman sprinkler fitter employed, and one apprentice sprinkler fitter for each three journeyman sprinkler fitters employed thereafter. The DOLI will not register apprentices in excess of these ratios. App. at A-9.

3. 29 U.S.C. §§ 1002(1), 1002(3) & 1144(a).

In early 1995, the parties brought cross-motions for summary judgment. The motions were heard on May 3, 1995. After the hearing, the district court took the matter under submission.

On March 26, 1996, the court issued its decision. App. at A-38 to A-53. In the decision, the court found that each of the plaintiffs had standing to bring the action against the defendants. The court also held that the statutory provisions and rules regarding apprenticeship were preempted by ERISA. The court declared the offending provisions unlawful, and permanently enjoined the defendants from: (1) requiring the registration of apprentice sprinkler fitters; (2) requiring fire protection contractors to employ only registered apprentices; and (3) requiring fire protection contractors to employ apprentices and journeymen in a specified ratio. App. at A-52.

The injunction entered by the court on that day has been in place ever since. Accordingly, the Department of Public Safety has never required contractors to adopt approved apprenticeship programs or register apprentices in such programs. Contractors have been allowed to develop their own apprenticeship programs and train their apprentices without unlawful interference from the state.

On February 1, 2000, Sprinkler Fitters Local 417 brought a motion to intervene in the action and dissolve the injunction. Local 417 contended that this Court's decision in *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997), rendered the injunction "inappropriate." The union claimed that it must be permitted to intervene and obtain relief from the injunction because the defendants had failed to act.

The plaintiffs opposed the motion to intervene and to dissolve the injunction. They contended that the motion to intervene was untimely and unjustified. They also argued that this Court's *Dillingham* decision does not compel — or even support — the lifting of the district court's permanent injunction.

On August 10, 2000, the district court issued its Order in the case. App. at A-33 to A-37. In its decision, the court granted the union's motion to intervene, but denied the union's motion to dissolve the injunction. The court reasoned that the *Dillingham* case did not alter the conclusion that the state apprenticeship requirements are preempted by ERISA.

On September 7, 2000, the union appealed the district court's decision to the Eighth Circuit Court of Appeals. The parties filed their respective briefs, and oral argument was held on May 17, 2001. At the conclusion of oral argument, the court took the matter under submission.

On October 5, 2001, the Eighth Circuit issued its decision. App. at A-6 to A-32. The court affirmed the district court's decision denying the union's motion to dissolve the injunction. The court held that the challenged statute and rules had an impermissible "connection with" ERISA plans and were therefore preempted by ERISA. The court also held that the statute and rules were not saved from preemption by ERISA's savings clause.

Local 417 filed petitions for rehearing and rehearing en banc. The petitions were denied on December 18, 2001. App. at A-4 to A-5. Local 417 filed its petition for writ of certiorari on March 18, 2002.

For the reasons set forth in detail below, Local 417's petition is without merit and should be denied.

REASONS FOR DENYING THE WRIT

I. The Eighth Circuit's Decision Is Wholly Consistent With This Court's *Dillingham* Decision.

Petitioner argues that the Eighth Circuit's decision is inconsistent with this Court's decision in *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997). A careful review of the *Dillingham* case reveals that the Eighth Circuit's decision is virtually compelled by that decision, however.

In *Dillingham*, the State of California maintained a law requiring the payment of prevailing wages on state-financed construction projects. Under the law, contractors were required to pay their construction workers the prevailing wages determined for the various trades. Contractors were also required to pay prevailing wages to apprentices, unless the apprentices were enrolled in a federally- or state-approved apprenticeship program. Apprentices enrolled in such a program could be paid the lower rates found in the program's graduated pay scale for apprentices.

The plaintiffs challenged the state law, claiming it was preempted by ERISA. In essence, they claimed that the state law "related to" employee benefit plans because it specified the wage rates that had to be paid to employees enrolled in ERISA apprenticeship plans. The plaintiffs also argued that the law coerced contractors into turning their unapproved apprenticeship plans into approved apprenticeship plans in order to take advantage of the lower apprentice wage rates applicable to approved plans.

This Court held that the state prevailing wage provisions relating to apprentices were not preempted by ERISA. The Court stated that the law did not "relate to" an ERISA plan because it did not "refer to" or have a "connection with" an ERISA plan. The Court reasoned that the law did not "refer to" an ERISA plan because it did not explicitly mention ERISA plans, and because the plans it impacted were not necessarily ERISA plans. The Court stated that the law did not have a "connection with" an ERISA plan because, while it created an "indirect economic incentive" for a contractor to adopt a specific kind of apprenticeship plan — *i.e.*, an approved apprenticeship plan — *it did not mandate or outlaw any ERISA apprenticeship plan.*

Clearly, the express holding in *Dillingham* — that ERISA does not preempt a state prevailing wage law requiring the payment of different wage rates to apprentices depending upon whether they are enrolled in an approved apprenticeship program — has no bearing on the present case. Unlike *Dillingham*, the present case does not involve a challenge to the state prevailing wage law, the application of the state prevailing wage law to apprentices, or the preemption of the state prevailing wage law under ERISA.

But significantly, the Court made clear that there is a fundamental distinction between state laws that merely have economic influences on ERISA plans, and those that dictate the terms of ERISA plans. The Court first reviewed the decisions in which it had found ERISA preemption, stating:

> In *Shaw v. Delta Air Lines, Inc.*, we held that the New York Human Rights Law, which prohibited "employers from structuring their employee benefit plans in a manner that

> discriminates on the basis of pregnancy," and New York's Disability Benefits Law, which required "employers to pay employees specific benefits," "relate[d] to" ERISA plans. 463 U.S., at 97. *Shaw* and other of our ERISA pre-emption decisions, see, *e.g.*, *FMC Corp. v. Holliday*, 498 U.S. 52 (1990); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), *presented us with state statutes that "mandated employee benefit structures or their administration"; in those cases, we concluded that these requirements amounted to "connection[s] with" ERISA plans.* See *Travelers*, 514 U.S., at 658.

519 U.S. at 328 (emphasis added). In other words, the Court reaffirmed its long-held view that state laws that dictate the terms of ERISA plans are preempted.

The Court then distinguished these earlier cases from its decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645 (1995). In *Travelers*, the Court had been asked to decide whether ERISA preempted a New York statute that required hospitals to collect surcharges from patients covered by a commercial insurer, but not from patients insured by a Blue Cross/Blue Shield plan. The Court had concluded that the statute was not preempted by ERISA.

In reviewing that decision, the *Dillingham* Court stated:

> The "indirect economic influence" of the surcharge, we noted, did not "*bind plan administrators to any particular choice and thus function as a regulation of an ERISA plan itself.*" 514 U.S., at 659. Nor did

> the indirect influence of the surcharge "*preclude uniform administrative practice or the provision of a uniform interstate benefit package if a plan wishe[d] to provide one.*" *Id.*, at 660.

519 U.S. at 329 (emphasis added). Again, the Court distinguished laws like the New York surcharge, which did not dictate the terms of ERISA plans, from those laws that directly regulated the terms of such plans.

Comparing the California prevailing wage statute to the New York surcharge requirement, the Court stated:

> Like New York's surcharge requirement, the apprenticeship portion of the prevailing wage statute *does not bind ERISA plans to anything.* No apprenticeship program is required by California law to meet California's standards. . . . If a contractor chooses to hire apprentices for a public works project, it need not hire them from an approved program (although if it does not, it must pay these apprentices journeyman wages). So, apprenticeship programs that have not gained CAC approval may still supply public works contractors with apprentices. Unapproved apprenticeship programs also may supply apprentices to private contractors. The effect of § 1777.5 on ERISA apprenticeship programs, therefore, is merely to provide some measure of economic incentive to comport with the State's requirements, at least to the extent that those programs seek to provide apprentices who can work on public works projects at a lower wage.

519 U.S. at 332 (citations omitted) (footnote omitted) (emphasis added). Clearly, the Court recognized a distinction between laws

like the California prevailing wage law, which merely created an incentive for the adoption of an approved apprenticeship plan, and the statute and rules in this case, which dictate the terms of an ERISA plan.

The Court reiterated that the absence of compulsion was critical to its decision. It stated:

> It cannot be gainsaid that § 1777.5 has the effect of encouraging apprenticeship programs — including ERISA plans — to meet the standards set out by California, *but it has not been demonstrated here that the added inducement created by the wage break available on state public works projects is tantamount to a compulsion upon apprenticeship programs.*

519 U.S. at 333 (footnote omitted) (emphasis added).

Finally, the Court stated:

> The effect of the prevailing wage statute on ERISA-covered apprenticeship programs in California is substantially similar to the effect of New York law on ERISA plans choosing whether to provide health insurance benefits in New York through the Blues, or through a commercial carrier. The prevailing wage statute alters the incentives, *but does not dictate the choices*, facing ERISA plans.

519 U.S. at 334 (emphasis added).[4]

4. The Court was also influenced by the fact that the California law did not dictate the terms of an ERISA plan and thereby destroy the contractor's ability to maintain a uniform interstate apprenticeship plan. The Court stated:

(Cont'd)

The clear implication of the foregoing language is that state laws like the California prevailing wage law, which have only an "indirect economic influence" on ERISA plans, do not have the requisite "connection with" such plans, and therefore are not preempted, whereas state laws like the statute and rules in this case, which dictate the terms of ERISA plans, have a "connection with" such plans and are therefore preempted.

Local 417 claims that the Eighth Circuit failed to accord adequate deference to this Court's "change in analysis" reflected in *Dillingham*, *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645 (1995), and *DeBuono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U.S. 806 (1997). But a review of the Eighth Circuit's decision reveals that it properly applied this Court's precedents to the facts of this case.

First, the court carefully examined the impact of *Dillingham*, *Travelers*, and *DeBuono* on the law of ERISA preemption. App. at A-11 to A-14. Second, the court reviewed *Dillingham* thoroughly, including this Court's distinction between state laws that provide "indirect economic incentives" and those that dictate the terms of ERISA plans.

(Cont'd)

> [T]he area of apprenticeship training may be one where uniformity of substantive standards across States is impossible. . . . We need not resolve this question. *Suffice it to say that the federal and state apprenticeship standards are not mandatory, and California's standards do not result in disuniformities different in kind from those that would exist without them.*

519 U.S. at 333 n.10 (citation omitted) (emphasis added).

App. at A-15 to A-17. Third, the court examined the requirements of the Minnesota statute and rules. App. at A-18 to A-19. Finally, the court stated:

> Thus, it is quite clear that the Minnesota statutes and rules, unlike the California law, require apprentice programs to comply with the Minnesota specifications. The Minnesota statute and rules do more than merely encourage or provide economic incentives to contractors to hire apprentices who are registered in approved programs, *the Minnesota statutes and rules absolutely demand it*. The statute unequivocally states that a "fire protection contractor may not employ a person to perform fire protection-related work unless the person is a managing employee, certified journeyman, or registered apprentice." Minn. Rule 7512.0900, subp. 3. Thus, the Minnesota statute, unlike the California statute, "dictate[s] the choices facing ERISA plans." *Dillingham*, 519 U.S. at 334, 117 S.Ct. 842.

App. at A-19 (emphasis added).

Contrary to Local 417's contention, the Eighth Circuit carefully applied this Court's analysis in concluding that the Minnesota statute and rules are preempted by ERISA. There is no need for this Court to review the Eighth Circuit's decision.

Local 417's claim that the Eighth Circuit's decision is inconsistent with *Dillingham* is ultimately dependent upon inaccurate characterizations of both the facts and the law.

The union contends that the Eighth Circuit's decision prohibits the "mere registration" of apprentices by the state. According to Local 417, the state may not even record the names and addresses of apprentices.[5]

In truth, neither the district court nor the Eighth Circuit was asked to consider the legality of such benign regulation. Instead, they were asked to consider whether ERISA preempts statutory provisions and rules that regulate ERISA apprenticeship programs by mandating the length of the

---

5. Implied in Local 417's argument is the notion that scores of apprentice sprinkler fitters are wandering Minnesota installing fire protection systems without adequate training or supervision. This implication ignores the many requirements of the fire protection licensing law that were neither challenged nor enjoined.

Specifically, all contractors performing fire protection work in Minnesota must be licensed to perform such work. Minn. Stat. § 299M.03, subd. 1; Minn. R. 7512.0400, subp. 1, 7512.0500-7512.0700. Each fire protection contractor must employ a state-tested and state-certified managing employee. Minn. R. 7512.0800, subp. 1, 7512.1300-7512.1600. All journeyman sprinkler fitters must be tested and certified by the state. Minn. Stat. §§ 299M.01, subd. 8, 299M.03, subd. 2; Minn. R. 7512.1700-7512.2000. All apprentices must work under the direct on-the-job supervision of a certified managing employee or journeyman. Minn. Stat. § 299M.01, subd. 2; Minn. R. 7512.0900, subp. 4. The managing employee or journeyman must "ensure[] that the apprentice is regularly engaged in learning the sprinkler fitter trade" and "determine that work performed by the apprentice is performed in compliance with the fire code and the building code." Minn. R. 7512.0900, subps. 4, 4.C.

These requirements ensure that apprentices perform their work competently and safely. In fact, there is *not one shred of evidence* in this case that any apprentice has failed to perform his or her job properly during the eight years the injunction has been in effect.

programs, the wage rates paid to apprentices, the amount of "related instruction" provided to apprentices, and the journeyman-apprentice ratios applicable to the programs. The lower courts correctly concluded that these onerous statutory provisions and rules had the prohibited "connection with" ERISA apprenticeship programs and are therefore preempted.

Similarly, Local 417 has claimed that the statute and rules are not burdensome because they allow a contractor to employ apprentices under a federally-approved program, a Minnesota state-approved program, or a program approved by another state.

In fact, the record is clear that a Minnesota contractor must adopt an apprenticeship program approved by the Minnesota Department of Labor and Industry in order to employ apprentices in the state. App. at A-8 & A-28 to A-29. The federal Bureau of Apprenticeship and Training will not approve a federal program for a contractor headquartered in a state, such as Minnesota, that has adopted its own state apprenticeship council. Similarly, neither the Department of Public Safety nor the Department of Labor and Industry has identified any agency other than the DOLI that can approve apprenticeship programs for Minnesota contractors.

Local 417's misapprehension of this state approval requirement also leads the union to the incorrect conclusion that the Minnesota statute and rules do not interfere with the uniformity of a contractor's ERISA apprenticeship program.

A Minnesota contractor must adopt a state-approved apprenticeship program. That program must meet the state duration, wage, related instruction, and ratio requirements.

If the Minnesota contractor attempts to do business in another state, and that state has adopted a regulatory scheme similar to the one in Minnesota, the contractor will have to adopt a program meeting that state's requirements, as well. That state's duration, wage, related instruction, and ratio requirements may be different from those in Minnesota. In addition, that state may impose requirements that Minnesota does not.

Obviously, if each state were able to adopt its own requirements, a contractor would be unable to maintain any uniformity in its apprenticeship program. One of the principal goals of ERISA would be compromised. *Dillingham*, 519 U.S. at 333.

Local 417's claim that the Eighth Circuit's decision is inconsistent with legal principles set forth in *Dillingham* and other Supreme Court decisions is also inaccurate.

The union claims that this Court recognized in *Dillingham* that state apprenticeship standards are not preempted by ERISA. The union contends that state laws regulating apprenticeship existed when ERISA was enacted, and that Congress must have intended that such laws survive.

This Court has observed, however, that "ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, 519 U.S. at 330. The critical inquiry is whether the state law at issue has the prohibited "connection with" an ERISA plan. Where such a connection exists, the law is preempted.

Similarly, the union has argued that the Minnesota statute and rules are not preempted because they do not "deal[] with

the subject matters covered by ERISA — reporting, disclosure, fiduciary responsibility, and the like." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 89 (1983). Again, however, this Court has held that ERISA's preemptive scope is not limited to such laws. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 658 (1995) (ERISA also preempts state laws that "mandate[] employee benefit structures or their administration."). The governing principle is whether the challenged law has the requisite "connection with" an ERISA plan.

Local 417 has claimed that the Eighth Circuit's decision cannot stand, or ERISA will be deemed to preempt all substantive regulation of medical clinics, daycare centers, and legal service clinics. This argument is also without merit.

The requirement that a contractor adopt a state-approved apprenticeship program was first held preempted more than a decade ago in *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee*, 891 F.2d 719 (9th Cir. 1989), *cert. denied*, 498 U.S. 822 (1990). Despite this fact, there has been no widespread preemption of state laws relating to medical clinics, daycare centers, or legal service clinics. Again, the requirement that a state law have a proscribed "connection with" an ERISA plan ensures that only state laws that have a significant impact on ERISA plans will be held preempted.

Finally, Local 417 asks the Court to recognize a distinction between the apprenticeship programs and the means by which the programs are funded. The union claims that ERISA preempts state laws that relate to the funding mechanisms, but not state laws that merely relate to the apprenticeship programs themselves.

While the union presents its argument in a novel fashion, this argument has already been roundly rejected in another form. Specifically, as noted above, this Court has made clear that preemption is not limited to state laws "dealing with the subject matters covered by ERISA — reporting, disclosure, fiduciary responsibility, and the like." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 89 (1983). ERISA also preempts state laws that "mandate[] employee benefit structures or their administration." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 658 (1995).

In fact, ERISA has been found to preempt a host of state laws that regulate benefit plans themselves, rather than their funding mechanisms. *E.g.*, *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992) (District of Columbia provision requiring employers to provide equivalent health care benefits for employees eligible for workers' compensation); *FMC Corp. v. Holliday*, 498 U.S. 52 (1990) (state law regulating subrogation rights of employee benefit plan); *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724 (1985) (state law requiring employee benefit plan to provide minimum mental health care benefits "relates to" ERISA plans); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (state law requiring employee benefit plan to provide pregnancy benefits); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) (state law prohibiting employee benefit plan from offsetting pension benefits with workers' compensation award); *Arkansas Blue Cross & Blue Shield v. St. Mary's Hospital, Inc.*, 947 F.2d 1341 (8th Cir. 1991), *cert. denied*, 504 U.S. 957 (1992) (state law regulating assignment rights under employee benefit plan "relates to" ERISA plans); *Baxter v. Lynn*, 886 F.2d 182 (8th Cir. 1989) (state common law restriction on subrogation

rights of employee benefit plan); *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981) (state law claim for tortious interference with employee benefit plan). The claim that ERISA preempts only those state laws that relate to funding plans runs counter to the entire body of ERISA jurisprudence.

In the final analysis, it is clear that the Eighth Circuit's decision is perfectly consistent with this Court's *Dillingham* decision. Accordingly, Local 417's petition for a writ of certiorari should be denied.

II. The Eighth Circuit Properly Distinguished The Present Case From The Tenth Circuit's *Willmar* Case.

Local 417 next contends that the Eighth Circuit's decision is in conflict with the Tenth Circuit's decision in *Willmar Electric Service, Inc. v. Cooke*, 212 F.3d 533 (10th Cir.), *cert. denied*, 531 U.S. 979 (2000). In *Willmar*, the Tenth Circuit held that a Colorado statute imposing a ratio requirement for electricians was not preempted by ERISA. Relying heavily upon the *Dillingham* case, the court held that the statute, which required one licensed journeyman for each apprentice employed on a job site, did not "relate to" the plaintiff employer's ERISA apprenticeship plan.

As the Eighth Circuit noted, however, *Willmar* is distinguishable from the case at bar:

> The Court in *Willmar* found that the effect of the supervision ratio requirement was to indirectly increase the cost of the apprenticeship training and thus was directly analogous to the apprentice wage law in *Dillingham*. The Court stated: "[i]n

> *Dillingham*, if the contractor chose to hire an apprentice from a non-approved program, it was compelled by state law to pay journeyman's wages. In our view this is comparable to the manner in which the Colorado law affects the Willmar training program — it does not prevent training, but it increases the cost associated with doing so." *Id.* at 538, n.3. This is the key distinction between the California and Colorado statutes and Minnesota's statute. Minnesota's statute acts to actually *prevent* training. A fire protection contractor working in Minnesota simply cannot hire an apprentice from an unapproved program. . . . There is no provision whereby a contractor can pay a higher wage if it wishes to do so, or hire more journeymen to supervise an apprentice. The statute simply does not allow apprentices who are not registered or who are not registered in approved programs to work as apprentice sprinkler fitters.

App. at A-20 to A-21 (emphasis in original).

Like this Court in *Dillingham*, the Eighth Circuit recognized the critical distinction between state laws that merely create an "indirect economic incentive" for contractors to alter their ERISA apprenticeship programs, and state laws that mandate the adoption of specific plan terms. The Eighth Circuit's decision is thus consistent with *Dillingham* and in harmony with *Willmar*. There is no need for this Court to grant certiorari to resolve a conflict among the circuits.

III. The Eighth Circuit Properly Held That The Minnesota Statute And Rules Are Not Saved From Preemption By ERISA's Savings Clause.

Finally, the union argues that the Minnesota statute and rules are saved from preemption by ERISA's savings clause. The union claims that preemption of the statute and rules would impair the enforcement of federal law; specifically, the federal Fitzgerald Act. This Court should reject the union's argument.

Section 514(d) of ERISA provides that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in §§ 1031 and 1137(c) of this title) or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d). This provision has been interpreted to "save" from preemption state laws that are necessary to the enforcement of federal law. *Associated General Contractors v. Smith*, 74 F.3d 926, 930 (9th Cir. 1996). Put another way, a state law will not be held preempted if to do so would impair the enforcement of federal law. *Id.*

The federal Fitzgerald Act provides for the voluntary adoption of apprenticeship programs by employers and others. 29 U.S.C. §§ 50, *et seq*. A state may choose to follow federal guidelines, administered by the Bureau of Apprenticeship and Training ("BAT") of the U.S. Department of Labor, or may establish its own guidelines through a state apprenticeship council ("SAC"). Depending upon which system the state chooses, employer apprenticeship programs are granted approval either through BAT or the state SAC. Because Minnesota is a SAC state, apprenticeship programs must be approved by the state apprenticeship council.

The key feature of the Fitzgerald Act as it relates to ERISA preemption is that the establishment of apprenticeship programs under the Act and the registration of apprentices in those programs *is entirely voluntary*. 29 U.S.C. §§ 50, *et seq*. Whether an employer chooses to take advantage of the Act *is entirely up to the employer*. *Id*. An employer's failure to adopt an approved program or register apprentices in the program has *absolutely no impact* upon the employer's ability to employ apprentices in this or any other state.

By way of contrast, the sprinkler fitter statute and rules require a Minnesota contractor to adopt a state-approved program and to register apprentices in it. A contractor who fails to comply with these requirements cannot employ apprentices in the state.

Clearly, preemption of the state statute and rules will not impair enforcement of the Fitzgerald Act in any way. While sprinkler fitter contractors will not be *required* to adopt apprenticeship programs covered under the Fitzgerald Act, they will not be *impeded or discouraged* from adopting such programs either. Any contractor who wishes to adopt a federally- or state-approved apprenticeship program may do so voluntarily, just as the Fitzgerald Act provides.

Because preemption of the state statute and rules in no way impairs enforcement of the Fitzgerald Act, ERISA's savings clause does not "save" those state provisions. *Associated General Contractors*, 74 F.3d at 930. They must be held preempted.

Minnesota Chapter of Associated Builders and Contractors, Inc. v. Minnesota Department of Labor and Industry, 47 F.3d 975 (8th Cir. 1995), relied upon by the

union, is inapposite. In that case, the plaintiffs challenged a state statute and rules that permitted a contractor to pay apprentices less than the prevailing wage if the apprentices were enrolled in a federally- or state-approved apprenticeship program. Like the Supreme Court in *Dillingham*, the Eighth Circuit held that the statute and rules were not preempted by ERISA. The Eighth Circuit also held that the statute and rules were saved by ERISA's savings clause in any event, because the preemption of the rules permitting apprentices to be paid at a lower rate would eliminate part of the benefit of an approved apprenticeship program, and thereby discourage employers from adopting such programs.

In the present case, as the Eighth Circuit observed, the state voluntary apprenticeship law does not allow for approval by a federal agency. App. at A-28 to A-29. Thus, preemption of the statutory provisions and rules incorporating that law cannot impair the enforcement of the federal Fitzgerald Act.

Moreover, as the court also noted, the only effect of preemption is to prevent the state from forcing contractors to adopt approved apprenticeship programs. Even though the state statute and rules are preempted, contractors may still adopt voluntary programs, and may realize all of the benefits therefrom. Preemption of the state statute and rules does not impair the Fitzgerald Act in any respect. Therefore, ERISA's "savings clause" does not apply. *Associated General Contractors*, 74 F.3d at 930.

CONCLUSION

The decision of the Eighth Circuit Court of Appeals is wholly consistent with this Court's *Dillingham* decision and the Tenth Circuit's *Willmar* decision. Moreover, the challenged statute and rules are not saved from preemption by ERISA's savings clause. Accordingly, there is no reason for this Court to review the decision below, and Local 417's petition for writ of certiorari should be denied.

Respectfully submitted,

GREGG J. CAVANAGH
13277 94th Avenue North
Maple Grove, Minnesota 55369
(763) 494-9465

Attorney for Respondents
Minnesota Chapter of Associated
Builders and Contractors, Inc.,
North Central Chapter of the
American Fire Sprinkler Association,
Allied Mechanical Systems of Hutchinson,
Inc., Ebert & Hinson Fire Protection, Inc.,
and General Sprinkler Corporation